

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

**GULFSTREAM AEROSPACE
CORPORATION**

PLAINTIFF

v.

OCELTIP AVIATION 1 PTY LTD

DEFENDANT

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CASE NO. 4:16-cv-00127-WTM-GRS

**OCELTIP MOTION TO STAY GULFSTREAM APPLICATION
TO CONFIRM ARBITRATION AWARD**

In the interest of judicial economy, Defendant, Oceltip Aviation 1 Pty Ltd ("Oceltip") respectfully moves this Court to stay further action on the *Application to Confirm Arbitration Award* ("Application") filed by Plaintiff Gulfstream Aerospace Corporation ("Gulfstream") in the above-styled action.

Oceltip has within three (3) months of the March 15, 2016 Final Award served upon Gulfstream the attached *Motion to Vacate Arbitration Award* filed in the Superior Court for Chatham County Georgia pursuant to the Georgia Arbitration Code (Ga. Code Ann. 9-9-1 *et seq.*) [See Exhibit A]

Under the forum defendant rule, 28 U.S.C. § 1441(b), Gulfstream may not remove the state court action to this or any other federal court, and the state court case will continue to term.

"In determining whether dismissal [or stay] of a federal action is appropriate, in the event of an exercise of concurrent jurisdiction, a federal court may consider such factors as the inconvenience of the federal forum, the desirability of avoiding piecemeal

litigation and the order in which jurisdiction was obtained by concurrent forums.”

Colorado River Water Conservation District v. United States, 424 US 800, 817, 96 S.Ct. 1236, 1247, (1976)(internal citations omitted).

Another factor which the Supreme Court has indicated has “considerable merit” is the “vexatious reactive nature of the federal litigation” where the stayed litigation was filed as a defensive tactical maneuver. Moses H. Cone Mem. Hospital v. Mercury Construction, 460 US 1, 18 n. 20, 103 S.Ct. 927, 938 n. 20 (1983)(noting that the federal court action had been filed as a tactical defensive maneuver). It is clear that Gulfstream’s Application was filed as a defensive tactic as it was filed within days of the deadline for Oceltip to file its Motion to Vacate.

Here, the desirability of avoiding conflicting rulings in separate and duplicative forums is patent. Further, while Gulfstream’s Application was filed in Federal District Court prior to Oceltip’s Motion to Vacate, the Application has yet to be served, while Oceltip’s action has been both filed and served. [See Affidavit of Service, Exhibit B].

In addition, while not determinative, the issues before this court are here solely pursuant to diversity jurisdiction and must be decided pursuant to Georgia law.O.C.G.A. §9-9-13 allows a party to an arbitration three months to move to vacate an Award. Oceltip has so filed. Proceeding forward with Gulfstream’s Application would deprive Oceltip of its statutory right to challenge the Award, despite having timely filed and served its Motion to Vacate.

All of the factors obviate towards the propriety of staying this action pending the resolution of Oceltip’s Motion to Vacate in The Superior Court of Chatham County.

If the Federal Arbitration Act is relevant, Section 12 provides: “For the purposes of the motion (to vacate) any judge who might make an order to stay the proceedings in

an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.”9 U.S.C.A. § 12.

Wherefore, Oceltip respectfully moves this Court to stay this action pending a final judgment in the state court action.

Respectfully submitted this 14th day of June 2016.

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